

MONTANA LEGISLATIVE HISTORY

Chapter 502 19 93

Bill H 318 S _____ Original bill & history ✓ C

H. Committee on Natural Resources

Hearing Date(s) Feb 10 ✓ C

Feb 13 ✓ C

_____ C

_____ C

Date Out Feb 15 ✓ C

S. Committee on Natural Resources

Hearing Date(s) Mar 24 ✓ C

Mar 27 ✓ C

_____ C

_____ C

Mar 29 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1/22	FISCAL NOTE REQUESTED		
1/23	REFERRED TO STATE ADMINISTRATION		
1/27	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
2/02	HEARING		
2/04	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED	93	6
2/10	3RD READING PASSED	95	2
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO STATE ADMINISTRATION		
3/09	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	47	1
3/29	3RD READING CONCURRED	43	5
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	96	1
4/02	3RD READING AMENDMENTS CONCURRED	94	5
4/07	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 400		
	EFFECTIVE DATE: 10/01/93		

HB 318 INTRODUCED BY S. RICE, ET AL.
 GENERALLY REVISE AIR QUALITY LAWS
 BY REQUEST OF DEPARTMENT OF HEALTH AND ENVIRONMENTAL
 SCIENCES

1/22	INTRODUCED		
1/22	REFERRED TO NATURAL RESOURCES		
1/22	FIRST READING		
1/23	FISCAL NOTE REQUESTED		
1/29	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/10	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	84	12
2/19	3RD READING PASSED	88	9
	TRANSMITTED TO SENATE		
2/22	FIRST READING		
2/22	REFERRED TO NATURAL RESOURCES		
3/24	HEARING		
3/30	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/31	2ND READING CONCURRED AS AMENDED	34	10
4/01	3RD READING CONCURRED	35	14
	RETURNED TO HOUSE WITH AMENDMENTS		
4/06	2ND READING AMENDMENTS CONCURRED	80	17
4/12	3RD READING AMENDMENTS CONCURRED	77	22
4/19	SIGNED BY SPEAKER		
4/20	SIGNED BY PRESIDENT		
4/21	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 502		
	EFFECTIVE DATE: 04/24/93—SECTIONS 1, 14-18 & 20-24		
	EFFECTIVE DATE: 10/01/93—SECTIONS 2-12, 13(1) & (3) & 19		
	EFFECTIVE DATE: 07/01/94—SECTION 13(2)		

HOUSE BILL NO. 318

INTRODUCED BY S. RICE, HALLIGAN, FAGG, KEATING
BY REQUEST OF THE DEPARTMENT
OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

JANUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 16, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 18, 1993	ENGROSSING REPORT.
FEBRUARY 19, 1993	THIRD READING, PASSED. AYES, 88; NOES, 9.
FEBRUARY 22, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 35; NOES, 14.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 12, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

23 WHEREAS, the Legislature believes that it is in the best
24 interests of both the citizens and businesses of this state
25 for the Department of Health and Environmental Sciences to

1 seek and obtain authorization from the federal government to
2 administer an operating permit program pursuant to
3 Subchapter V of the federal Clean Air Act; and

4 WHEREAS, to provide the Department of Health and
5 Environmental Sciences with the statutory authority
6 necessary to obtain authorization under Subchapter V,
7 numerous amendments and additions to the Clean Air Act of
8 Montana are necessary and appropriate, including significant
9 amendments to existing permitting, fee, and enforcement
10 authority and the adoption of new provisions governing the
11 operating permit program and relating to assistance for
12 small businesses.

14 STATEMENT OF INTENT

15 A statement of intent is provided for this bill because
16 it extends current rulemaking authority of the board of
17 health and environmental sciences to adopt rules
18 implementing a program for the issuance and renewal of air
19 quality operating permits by the department of health and
20 environmental sciences and amends several sections of the
21 Clean Air Act of Montana for which the board currently has
22 rulemaking authority, including the authority to adopt air
23 quality permit fees to be collected by the department of
24 health and environmental sciences.

25 Section 75-2-204 and [section 9] provide the authority

1 to the board and department to create and administer an
2 operating permit program for those sources subject to
3 Subchapter V of the federal Clean Air Act, and it is the
4 desire of the legislature that the program be applied only
5 to those sources covered by the statutory requirements of
6 Subchapter V. These sections and the amendments contained in
7 75-2-103(2) are also intended to clarify the department's
8 existing authority to implement the provisions of the
9 federal Clean Air Act relating to hazardous air pollutants,
10 42 U.S.C. 7412, as those provisions relate to the
11 requirements of Subchapter V.

12 Section 75-2-211 contains amendments that clarify the
13 authority of the department to continue to administer the
14 air quality permitting program relating to the construction,
15 installation, alteration, or use of air contaminant sources.
16 It is the desire of the legislature that the department
17 continue this permitting program in conjunction with the
18 operating permit program under [sections 9 through 11]. This
19 authority is currently used for conducting various state air
20 quality permitting programs, as well as for operating
21 federal permitting programs relating to prevention of
22 significant deterioration and nonattainment, all of which
23 are part of the state implementation plan for protecting air
24 quality. In addition to these programs, the legislature
25 intends that 75-2-211 serve as the authority needed to meet

the requirements of the federal Clean Air Act relating to the construction, reconstruction, and modification of sources of hazardous air pollutants, 42 U.S.C. 7412.

[Section 12] contains the department's existing authority to assess application and annual fees for permits issued under the Clean Air Act of Montana, Title 75, chapter 2. The placement of this authority in a separate section of the code emphasizes its general applicability to all permitting activities under that chapter. [Section 12(1), (2), and (3)] contain amendments to the existing fee authority to ensure that the department will be able to collect fees sufficient to meet the requirements of Subchapter V of the federal Clean Air Act. [Section 12(5)] is intended to provide the department with an alternative to civil enforcement in addressing the delinquent payment of fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or

any combination thereof, including pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which that are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Emission" means a release into the outdoor atmosphere of air contaminants.

(7) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(8) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or

1 fewer individuals;

2 (b) is a small business concern as defined in the Small
3 Business Act, 15 U.S.C. 631, et seq.;

4 (c) is not a major stationary source as defined in
5 Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661,
6 et seq.;

7 (d) emits less than 50 tons per year of a regulated air
8 contaminant;

9 (e) emits less than a total of 75 tons per year of all
10 regulated air contaminants combined; and

11 (f) is not excluded from this definition under [section
12 17(3)]."

13 **Section 2.** Section 75-2-105, MCA, is amended to read:

14 "75-2-105. Confidentiality of records. (1) Records or
15 other information concerning air contaminant sources which
16 that are furnished to or obtained by the board or department
17 are a matter of public record and open to public use.
18 However, any information unique to the owner or operator of
19 an air contaminant source which that would, if disclosed,
20 reveal methods or processes entitled to protection as trade
21 secrets shall must be maintained as confidential if so
22 determined by a court of competent jurisdiction. The owner
23 or operator shall file a declaratory judgment action to
24 establish the existence of a trade secret if he the owner or
25 operator wishes such the information to enjoy confidential

1 status. The department ~~shall~~ must be served in ~~any-such~~ the
2 action and may intervene as a party ~~therein~~ in the action.

3 Any ~~A~~ trade secrets secret not intended to be public when
4 submitted to the board or department ~~shall~~ must be submitted
5 in writing and clearly marked as confidential. However,
6 emission data and operating permits issued by the department
7 pursuant to [sections 9 through 11] shall-never may not be
8 considered confidential for the purposes of this section.

9 (2) This section does not prevent the use of records or
10 information by the board or department in compiling or
11 publishing analyses or summaries relating to the general
12 condition of the outdoor atmosphere if the analyses or
13 summaries do not identify an owner or operator or reveal
14 information otherwise made confidential by this section."

15 **Section 3.** Section 75-2-204, MCA, is amended to read:

16 "75-2-204. Rules relating to construction,
17 installation, alteration, operation, or use. The board may
18 by rule prohibit the construction, installation, alteration,
19 operation, or use of a machine, equipment, device, or
20 facility which that it finds may directly or indirectly
21 cause or contribute to air pollution or which that is
22 intended primarily to prevent or control the emission of air
23 pollutants contaminants, unless a permit ~~therefor~~ has been
24 obtained under this part."

25 **Section 4.** Section 75-2-211, MCA, is amended to read:

*75-2-211. Permits for construction, installation, alteration, operation, or use. (1) ~~The department~~ The board shall by rule provide for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of a permit issued operating permits as part of an operating permit program to be administered by the department under this part chapter.

~~{2}--For--all--sources--of--air--contaminants--that--are subject--to--the--provisions--of--Title--V--of--the--federal--Clean Air--Act,--42-U.S.C.--7401,--et--seq,--as--amended,--the--provisions of--this--section--apply--in--addition--to--the--other--applicable provisions--of--this--chapter.~~

~~{a}--The--board--shall--by--rule--require--that--permits--issued to--sources--described--in--subsection--{2}--be--of--limited duration,--but--it--may--not--limit--the--duration--of--the--permits beyond--that--required--by--the--federal--Clean--Air--Act,--42-U.S.C.--7401,--et--seq,--as--amended.~~

~~{b}--The--board--shall--by--rule--provide--for--the--renewal--of permits--issued--to--the--sources.~~

~~{c}--The--board--shall--by--rule--establish--a--transition schedule--for--air--quality--permits--held--by--sources--of--air contaminants--subject--to--the--provisions--of--subsection--{2}. The--transition--schedule--must--specify--dates--for--the expiration--of--the--permits,--absent--an--application--for--renewal by--the--source. The--transition--schedule--may--not--specify~~

~~expiration--dates--that--are--earlier--in--time--than--those required--by--Title--V--of--the--federal--Clean--Air--Act,--42--U.S.C.--7401,--et--seq,--as--amended. The--transition--schedule established--by--the--board--also--applies--to--existing--sources--of air--contaminants--that--are--subject--to--the--provisions--of--Title V--of--the--federal--Clean--Air--Act,--42-U.S.C.--7401,--et--seq,--as amended,--and--that--do--not--hold--an--air--quality--permit--from--the department--as--of--November--2,--1992.~~

~~{3}{2}~~ Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility which that the board finds may directly or indirectly cause or contribute to air pollution or which that is intended primarily to prevent or control the emission of air pollutants contaminants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

~~{4}--Concurrent--with--the--submittal--of--a--permit application--required--by--subsection--{3}--and--annually--for--the duration--of--the--permit,--the--applicant--shall--submit--to--the department--a--fee--sufficient--to--cover--the--reasonable--costs, both--direct--and--indirect,--of--developing--and--administering the--permitting--requirements--in--this--chapter,--including--the reasonable--costs--of:~~

~~{a}--reviewing--and--acting--upon--the--application;~~

(b)--implementing-and-enforcing-the-terms-and-conditions of--the-permit-if-the-permit-is-issued. However, this amount does-not-include-any-court-costs-or-other--costs--associated with--any--enforcement--action--if-the-permit-is-not-issued, the-department-shall-return-this-portion-of-the-fee--to--the applicant;

(c)--emissions-and-ambient-monitoring;

(d)--preparing---generally---applicable--regulations--or guidance;

(e)--modeling, analysis, and demonstrations; and

(f)--preparing-inventories-and-tracking-emissions.

(5)--In-addition-to-the-fee--required--under--subsection (4),--the--board-may-order-the-assessment-of-additional-fees required-to-fund-specific-activities-of-the-department--that are---directed--at--a--particular--geographic--area--if--the legislature-authorizes-the-activities-and--appropriates--the funds--for--the--activities,--including-emissions-or-ambient monitoring,--modeling---analysis---or---demonstrations,---or emissions--inventories--or--tracking. Additional assessments may-be-levied-only-on-those-sources-that-are-within--or--are believed--by--the--department-to-be-impacting-the-geographic area. Before-the-board-may-require-the-assessments, it-shall first-determine, after-opportunity--for--hearing,--that--the activities-to-be-funded-are-necessary-for-the-administration or--implementation--of--this--chapter,--that-the-assessments

apportion-the-required-funding-in-an-equitable--manner,--and that--the--department-has-obtained-legislative-authorization for-the-expenditure-and-the-necessary-appropriation.

(6)--As--a--condition--of--the--continuing--validity--of permits-issued-by-the-department-under-this--part--prior--to October-1, 1991, the-department-may-require-the-permit holder to---pay--an--annual--fee--sufficient--to--cover--the--costs identified-in-subsection-(4);

(7)--For-any-existing-source-of-air-contaminants-that-is subject-to-Title-V-of-the-federal-Clean-Air-Act,--42--U.S.C. 7401,--et-seq., as-amended, and-that-is-not-required-to-hold an-air-quality-permit-from-the-department-as-of--October--1, 1991,--the-board-may, as-a-condition-of-continued-operation, require-by-rule-that-the-owner-or-operator-of-the-source-pay the-annual-fee-provided-for-in-subsection--(4).--Nothing--in this--subsection-may-be-construed-as-allowing-the-department to-charge-any-source--of--air--contaminants--more--than--one annual-fee-that-is-designed-to-cover-the-costs-identified-in subsection-(4);

(8)--The--fees--collected--by-the-department-pursuant-to this-section-must-be-deposited-in-the-state-special--revenue fund-to-be-appropriated-by-the-legislature-to-the-department for--the--development--and--administration-of-the-permitting requirements-in-this-chapter.

(9)--(a)-The-department-shall-give-written-notice-of-the

amount-of-the-fee-to-be--assessed--and--the--basis--for--the
 department's--fee-assessment-under-this-section-to-the-owner
 or-operator-of-the-air--contaminant--source.--The--owner--or
 operator--may--appeal-the-department's-fee-assessment-to-the
 board-within-20-days-after-receipt-of-the-written-notice.

(b)--An-appeal-must-be-based-upon--the--allegation--that
 the--fee-assessment-is-erroneous-or-excessive.--An-appeal-may
 not-be-based-only-on-the-amount-of-the-fee-schedule--adopted
 by-the-board.

(c)--If--any-part-of-the-fee-assessment-is-not-appealed,
 it-must-be-paid-to-the-department-upon-receipt-of-the-notice
 in-subsection-(9)(a).

(d)--The--contested--case--provisions--of--the--Montana
 Administrative--Procedure--Act--provided--for--in--Title--2,
 chapter--4,--apply--to--any-hearing-before-the-board-under-this
 subsection-(9).

(3) The permit program administered by the department
 pursuant to this section must include the following:

(a) requirements and procedures for permit
 applications, including standard application forms;

(b) requirements and procedures for submittal of
 information necessary to determine the location, quantity,
 and type of emissions;

(c) procedures for public notice and opportunity for
 comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity
 for comment to contiguous states and federal agencies, as
 appropriate;

(e) requirements for inspection, monitoring,
 recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension,
 modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate
 emission limitations and other requirements, including
 enforceable measures necessary to ensure compliance with
 those limitations and requirements;

(i) requirements and procedures for permit modification
 and amendment; and

(j) requirements and procedures for issuing a single
 permit authorizing emissions from similar operations at
 multiple temporary locations, which permit may include
 conditions necessary to ensure compliance with the
 requirements of this chapter at all authorized locations and
 a requirement that the owner or operator notify the
 department in advance of each change in location.

~~†††~~(4) ~~Nothing-in-this~~ This section shall does not
 restrict the board's authority to adopt regulations
 providing for a single air quality permit system.

~~†††~~(5) The department may, for good cause shown, waive

1 or shorten the time required for filing the appropriate
2 applications.

3 ~~{12}(6)~~ The department shall require that applications
4 for permits be accompanied by any plans, specifications, and
5 other information it considers necessary.

6 ~~{13}(7)~~ An application is not considered filed until
7 the applicant has submitted all fees required under (section
8 12) and all information and completed ~~all~~ application forms
9 required by pursuant to subsections (2), (3), and (6)
10 through-(7)-and-(12). ~~However,-if~~ If the department fails to
11 notify the applicant in writing within 30 days after the
12 purported filing of an application that the application is
13 incomplete and fails to list the reasons why the application
14 is considered incomplete, the application is considered
15 filed as of the date of the purported filing.

16 ~~{14}(8)~~ (a) Where If an application for a permit
17 requires the compilation preparation of an environmental
18 impact statement under the Montana Environmental Policy Act,
19 Title 75, chapter 1, parts 1 through 3, the department shall
20 notify the applicant in writing of the approval or denial of
21 the application within:

22 (i) 180 days of after the department's receipt of a
23 filed application, as defined provided in subsection
24 ~~{13}(7)~~, if the department prepares the environmental impact
25 statement; or

1 (ii) within 30 days after issuance of the final
2 environmental impact statement by the lead agency if a state
3 agency other than the department has been designated by the
4 governor as lead agency for preparation of the environmental
5 impact statement.

6 (b) ~~However,-where~~ If an application does not require
7 the compilation preparation of an environmental impact
8 statement, the department shall notify the applicant in
9 writing within 60 days ~~of-the~~ after its receipt of a filed
10 application, as defined provided in subsection ~~{13}(7)~~, of
11 the its approval or denial of the application. Notification
12 of approval or denial may be served personally or by
13 ~~registered-or~~ certified mail on the applicant or his the
14 applicant's agent.

15 (c) Failure by the department to act in a timely manner
16 does not constitute approval or denial of the application.

17 ~~{15}(9)~~ When the department approves or denies the
18 application for a permit under this section, a person who is
19 jointly or severally adversely affected by the department's
20 decision may request, a hearing before the board. The
21 request for hearing must be filed within 15 days after the
22 department renders its decision,-upon and must include an
23 affidavit setting forth the grounds therefor,-a--hearing
24 before--the--board; for the request. A-hearing-shall-be-held
25 under-the-provisions-of-the-Montana-Administrative-Procedure

1 Act: The contested case provisions of the Montana
 2 Administrative Procedure Act, Title 2, chapter 4, part 6,
 3 apply to a hearing before the board under this subsection.

4 ~~{16}~~(10) The department's decision on the application is
 5 not final unless 15 days have elapsed from the date of the
 6 decision and there is no request for a hearing under this
 7 section. The filing of a request for a hearing postpones the
 8 effective date of the department's decision until the
 9 conclusion of the hearing and issuance of a final decision
 10 by the board."

11 **Section 5.** Section 75-2-401, MCA, is amended to read:

12 "75-2-401. Enforcement -- notice -- order for
 13 corrective action -- administrative penalty. (1) When the
 14 department believes that a violation of this chapter, a rule
 15 made adopted under this chapter, or a condition or
 16 limitation imposed by a permit issued pursuant to this
 17 chapter has occurred, it may cause written notice to be
 18 served personally or by ~~registered-or~~ certified mail on the
 19 alleged violator or ~~his~~ the violator's agent. The notice
 20 ~~shall~~ must specify the provision of this chapter, or the
 21 rule, or the permit condition or limitation alleged to be
 22 violated and the facts alleged to constitute a violation.
 23 The notice and may include an order to take necessary
 24 corrective action within a reasonable period of time stated
 25 in the order or an order to pay an administrative penalty,

1 or both. The order becomes final unless, within 30 days
 2 after the notice is received, the person named requests in
 3 writing a hearing before the board. On receipt of the
 4 request, the board shall schedule a hearing.

5 (2) If, after a hearing held under subsection (1) of
 6 ~~this-section~~, the board finds that violations have occurred,
 7 it shall ~~either-affirm-or-modify-an-order-previously-issued~~
 8 or issue an appropriate order for the prevention, abatement,
 9 or control of the emissions involved or for the taking of
 10 other corrective action ~~it-considers-appropriate~~ or assess
 11 an administrative penalty, or both. ~~An~~ As appropriate, an
 12 order issued as part of a notice or after a hearing may
 13 prescribe the date by which the violation shall must cease;
 14 ~~and--may--prescribe~~ time limits for particular action in
 15 preventing, abating, or controlling the emissions; or the
 16 date by which the administrative penalty must be paid. If,
 17 after a hearing on an order contained in a notice, the board
 18 finds that ~~no~~ a violation has not occurred or is not
 19 occurring, it shall rescind the order.

20 (3) (a) An action initiated under this section may
 21 include an administrative civil penalty of not more than
 22 \$10,000 for each day of each violation, not to exceed a
 23 total of \$80,000. If an order issued by the board under this
 24 section requires the payment of an administrative civil
 25 penalty, the board shall state findings and conclusions

describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

(i) the gravity of the violation;

(ii) whether the amount of the penalty serves as a deterrent relative to the alleged violator's ability to pay;

(iii) the economic benefit or savings, if any, to the alleged violator as a result of noncompliance; and

(iv) other matters as justice may require.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(3)(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

~~(4)(6)~~ This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

~~(5)(7)~~ In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 6. Section 75-2-412, MCA, is amended to read:

"75-2-412. Criminal penalties -- injunction preserved.
~~(1)-A person who violates this chapter or a rule, order, or permit made or issued under it, other than 75-2-105, is guilty of an offense and subject to a fine not to exceed \$1,000. Each day of violation constitutes a separate offense.~~

~~(2)-A person who willfully violates 75-2-105 is guilty of an offense and subject to a fine not to exceed \$1,000.~~ (1) A person is guilty of an offense under this section if that person knowingly:

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

1 (c) renders inaccurate a monitoring device or method
2 required under this chapter.

3 (2) A person guilty of an offense under subsection (1)
4 is subject to a fine of not more than \$10,000 per violation
5 or imprisonment for a period not to exceed 3 years, or both.
6 Each day of each violation constitutes a separate violation.

7 (3) Fines collected under this section, except those
8 finest collected in-a-justice's-court, by an approved local
9 air pollution control program, shall must be deposited to in
10 the state general fund.

11 (4) Action under this section is not a bar to
12 enforcement of this chapter or of a rule, order, or permit
13 made or issued under it by injunction or other appropriate
14 civil or administrative remedy. The department may institute
15 and maintain in the name of the state any enforcement
16 proceedings."

17 **Section 7.** Section 75-2-413, MCA, is amended to read:

18 "75-2-413. Civil penalties -- out-of-state litigants --
19 effect of action -- presumption of continuing violation. (1)
20 Any A person who violates any provision of this chapter, a
21 or-any rule enforced-thereunder adopted under this chapter,
22 or any order or permit made or issued pursuant-thereto-and
23 after-notice-thereof-has-been-given-by-the-department--shall
24 be under this chapter is subject to a civil penalty not to
25 exceed \$10,000 per violation. Each day of each violation

1 ~~shall--constitute~~ constitutes a separate violation. The
2 department may institute and maintain in the name of the
3 state any enforcement proceedings hereunder under this
4 section. Upon request of the department, the attorney
5 general or the county attorney of the county of violation
6 shall petition the district court to impose, assess, and
7 recover the civil penalty. The civil penalty is in lieu of
8 the criminal penalty provided for in 75-2-412.

9 (2) (a) Action under subsection (1) of-this-section is
10 not a bar to enforcement of this chapter or of a rule,
11 order, or permit made or issued under it by injunction or
12 other appropriate civil remedies.

13 (b) An action under subsection (1) or to enforce this
14 chapter or a rule, order, or permit made or issued under it
15 may be brought in the district court of any county where a
16 violation occurs or is threatened if the defendant cannot be
17 located in Montana.

18 (3) If the department has notified a person of a
19 violation under 75-2-401 and if the department makes a prima
20 facie showing that the conduct or events giving rise to the
21 violation are likely to have continued or recurred past the
22 date of notice, the days of violation are presumed to
23 include the date of the notice and every day after the
24 notice until the person establishes that continuous
25 compliance has been achieved. This presumption may be

1 overcome to the extent the person can prove by a
 2 preponderance of evidence that there were intervening days
 3 when a violation did not occur or that the violation was not
 4 continuing in nature.

5 (4) Moneys Money collected hereunder-shall under this
 6 section must be deposited in the state general fund. This
 7 subsection does not apply to money collected by an approved
 8 local air pollution control program."

9 **Section 8.** Section 75-2-421, MCA, is amended to read:

10 "75-2-421. Persons subject to noncompliance penalties
 11 -- exemptions. (1) Except as provided in subsection (2), the
 12 department shall may assess and collect a noncompliance
 13 penalty from any person who owns or operates:

14 (a) a stationary source (other than a primary
 15 nonferrous smelter which that has received a nonferrous
 16 smelter order under 42 U.S.C. 7419) which that is not in
 17 compliance with any emission limitation specified in an
 18 order of the board, emission standard, or compliance
 19 schedule under the state implementation plan approved by the
 20 federal environmental protection agency;

21 (b) a stationary source which that is not in compliance
 22 with an emission limitation, emission standard, standard of
 23 performance, or other requirement under this chapter or 42
 24 U.S.C. 7411, or 42-U.S.C. 7412, 7477, or 7603; or

25 (c) a stationary source that is not in compliance with

1 any other requirement under this chapter or any requirement
 2 of Subchapter V of the federal Clean Air Act, 42 U.S.C.
 3 7661, et seq.; or

4 ~~(c)~~(d) any source referred to in subsections (1)(a), or
 5 (1)(b), or (1)(c) which that has been granted an exemption,
 6 extension, or suspension under subsection (2) or which that
 7 is covered by a compliance order, or a primary nonferrous
 8 smelter which that has received a primary nonferrous smelter
 9 order under 42 U.S.C. 7419, if such that source is not in
 10 compliance with any interim emission control requirement or
 11 schedule of compliance under such the extension, order, or
 12 suspension.

13 (2) Notwithstanding the requirements of subsection (1),
 14 the department may, after notice and opportunity for a
 15 public hearing, exempt any source from the requirements of
 16 75-2-421 through 75-2-429 with respect to a particular
 17 instance of noncompliance which that:

18 (a) the department finds is de minimus in nature and in
 19 duration;

20 (b) is caused by conditions beyond the reasonable
 21 control of the source and is of no demonstrable advantage to
 22 the source; or

23 (c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the
 24 federal Clean Air Act.

25 (3) Any person who is jointly or severally adversely

affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor for it, a hearing before the board. A hearing ~~shall~~ must be held under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6."

NEW SECTION. Section 9. Operating permit program -- exemptions -- general requirements -- duration. (1) The board shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter.

(2) This section applies to all sources of air contaminants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under [section 10] and this section or operate any source required to have a permit under this section without having complied with the requirements of the operating permit program administered by the department pursuant to [sections 10 and 11] and this section.

(4) The board may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the board

determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The board may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The board may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under [section 10] and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit and renewal applications, including standard application forms and criteria for evaluating application completeness and the need for additional information after a completeness determination has been made;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity

1 for comment to contiguous states and federal agencies, as
2 appropriate;

3 (e) requirements for inspection, monitoring,
4 recordkeeping, compliance certification, and reporting;

5 (f) deadlines for submitting permit applications and
6 compliance plans that are not later than 12 months after the
7 source becomes subject to the operating permit requirement;

8 (g) deadlines for submitting permit renewal
9 applications that are not later than 6 months before
10 expiration of the existing operating permit;

11 (h) requirements for compliance plans that must be
12 submitted with permit and renewal applications, including
13 schedules of compliance and progress reports;

14 (i) requirements and procedures for periodic
15 certification of source compliance with permit requirements,
16 including the prompt reporting of any deviations from permit
17 requirements;

18 (j) requirements for submission of any plans,
19 specifications, or other information that the department
20 considers necessary under this section;

21 (k) conditions and procedures for the transfer of
22 operating permits;

23 (l) requirements and procedures for suspension,
24 modification, amendment, and revocation of permits by the
25 department for cause, including the modification or

1 amendment of permits before renewal or termination to
2 incorporate applicable limitations or requirements effective
3 after permit issuance;

4 (m) requirements and procedures for incorporating into
5 permits and permit renewals all applicable emission
6 limitations and other requirements, including enforceable
7 measures necessary to ensure compliance with those
8 limitations and requirements;

9 (n) requirements and procedures for permit modification
10 and amendment;

11 (o) procedures for tracking activities conducted under
12 general permits;

13 (p) requirements and procedures for issuing a single
14 operating permit authorizing emissions from similar
15 operations at multiple temporary locations, which permit may
16 include conditions necessary to ensure compliance with the
17 requirements of this chapter at all authorized locations and
18 a requirement that the owner or operator notify the
19 department in advance of each change in location;

20 (q) requirements and procedures for allowing changes
21 within a permitted facility without requiring a permit
22 amendment if the changes are not prohibited under this
23 chapter and do not exceed the emissions allowable under the
24 permit; and

25 (r) other requirements necessary for the department to

1 obtain the authorization to administer an operating permit
2 program under the provisions of Subchapter V of the federal
3 Clean Air Act.

4 NEW SECTION. **Section 10. Permits for operation --**

5 application completeness -- action by department --
6 application shield -- review by board. (1) An application
7 for an operating permit or renewal is not considered filed
8 until the department has determined that it is complete. An
9 application is complete if all fees required under [section
10 12] and all information and completed application forms
11 required under [section 9] have been submitted. A complete
12 application must contain all of the information required for
13 the department to begin processing the application. If the
14 department fails to notify the applicant in writing within
15 60 days after submittal of an application that the
16 application is incomplete and fails to list the reasons why
17 the application is considered incomplete, the application is
18 considered filed on the date of the department's receipt of
19 the application. The department may request additional
20 information after a completeness determination has been
21 made.

22 (2) Except as provided in subsection (3), the
23 department shall, consistent with the procedures established
24 under [section 9], approve or disapprove a complete
25 application for an operating permit or renewal and shall

1 issue or deny the permit or renewal within 18 months after
2 the date of filing. Failure of the department to act in a
3 timely manner does not constitute approval or denial of the
4 application.

5 (3) The board may by rule provide for a transition
6 schedule for both the submittal to the department of initial
7 applications for operating permits by existing sources and
8 action by the department on these initial permit
9 applications. The board may require that one-third of all
10 operating permit applications required for existing sources
11 be submitted within the first calendar year after the
12 adoption of rules implementing an operating permit program
13 under [section 9]. Any transition schedule for action by the
14 department must ensure that all permit applications required
15 under [section 9] and this subsection for existing sources
16 will be acted upon by the department before November 15,
17 1997.

18 (4) If an applicant submits a timely and complete
19 application for an operating permit, the applicant's failure
20 to hold a valid operating permit is not a violation of
21 [section 9]. If an applicant submits a timely and complete
22 application for an operating permit renewal, the expiration
23 of the applicant's existing operating permit is not a
24 violation of [section 9]. The applicant is not entitled to
25 the protection of this subsection if the delay in final

1 action by the department on the application results from the
2 applicant's failure to submit in a timely manner information
3 requested by the department to process the application.

4 (5) Except as provided in subsection (8), if the
5 department approves or denies an application for an
6 operating permit or the renewal, modification, or amendment
7 of a permit under [section 9] and this section, any person
8 that participated in the public comment process required
9 under [section 9 (7)] may request a hearing before the
10 board. The request for hearing must be filed within 30 days
11 after the department renders its decision and must include
12 an affidavit setting forth the grounds for the request. The
13 contested case provisions of the Montana Administrative
14 Procedure Act, Title 2, chapter 4, part 6, apply to a
15 hearing before the board under this subsection.

16 (6) Except as provided in subsection (8), the
17 department's decision on any application is not final until
18 30 days have elapsed from the date of the decision and there
19 is no request for a hearing under this section. The filing
20 of a request for hearing postpones the effective date of the
21 department's decision until the conclusion of the hearing
22 and issuance of a final decision by the board.

23 (7) The requirements of subsections (5) and (6) apply
24 to any action initiated by the department to suspend,
25 revoke, modify, or amend an operating permit issued under

1 this section.

2 (8) The denial by the department of an application
3 under [section 9] and this section is not subject to review
4 by the board or judicial review if the basis for denial is
5 the written objection of the appropriate federal agency
6 acting pursuant to the federal Clean Air Act, 42 U.S.C.
7 7401, et seq.

8 (9) Compliance with an operating permit granted or
9 renewed under [section 9] and this section is considered to
10 be in compliance with the requirements of this chapter only
11 if the permit expressly includes those requirements or an
12 express determination that those requirements are not
13 applicable. This subsection does not apply to general
14 permits provided for under [section 9].

15 NEW SECTION. **Section 11. Permits for operation --**
16 **limitations.** [Sections 9 and 10] may not be construed to:

17 (1) affect the department's issuance of a permit for
18 the construction, installation, alteration, or use of a
19 source of air contaminants pursuant to 75-2-211 or 75-2-215;

20 (2) restrict the board's authority to adopt regulations
21 providing for a single air quality permit system; or

22 (3) affect permits, allowances, phase II compliance
23 schedules, or other acid rain provisions under Subchapter IV
24 of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

25 NEW SECTION. **Section 12. Fees -- special assessments**

1 -- late payment assessments. (1) Concurrent with the
 2 submittal of a permit application required under this
 3 chapter and annually for the duration of the permit, the
 4 applicant shall submit to the department a fee sufficient to
 5 cover the reasonable costs, direct and indirect, of
 6 developing and administering the permitting requirements in
 7 this chapter, including:

- 8 (a) reviewing and acting upon the application;
- 9 (b) implementing and enforcing the terms and conditions
 10 of the permit. This amount does not include any court costs
 11 or other costs associated with an enforcement action. If the
 12 permit is not issued, the department shall return this
 13 portion of the fee to the applicant.
- 14 (c) emissions and ambient monitoring;
- 15 (d) preparing generally applicable regulations or
 16 guidance;
- 17 (e) modeling, analysis, and demonstrations;
- 18 (f) preparing inventories and tracking emissions;
- 19 (g) providing support to sources under the small
 20 business stationary source technical and environmental
 21 compliance assistance program; and
- 22 (h) all other costs required to be recovered pursuant
 23 to Subchapter V of the federal Clean Air Act, 42 U.S.C.
 24 7661, et seq.
- 25 (2) In recovering the costs described in subsection

1 (1), the department may assess fees for emissions of air
 2 contaminants regulated under this chapter, including but not
 3 limited to volatile organic compounds, each air contaminant
 4 regulated under section 7411 or 7412 of the federal Clean
 5 Air Act, 42 U.S.C. 7401, et seq., and each air contaminant
 6 subject to a national primary ambient air quality standard.

7 (3) The board shall by rule provide for the annual
 8 adjustment of all fees assessed for operating permit
 9 applications under [sections 9 and 10] to account for
 10 changes to the consumer price index, as required by
 11 Subchapter V of the federal Clean Air Act.

12 (4) In addition to the fee required under subsection
 13 (1), the board may order the assessment of additional fees
 14 required to fund specific activities of the department that
 15 are directed at a particular geographic area if the
 16 legislature authorizes the activities and appropriates funds
 17 for the activities, including emissions or ambient
 18 monitoring, modeling analysis or demonstrations, or
 19 emissions inventories or tracking. Additional assessments
 20 may be levied only on those sources that are within or are
 21 believed by the department to be impacting the geographic
 22 area. Before the board may require the fees, it shall first
 23 determine, after opportunity for hearing, that the
 24 activities to be funded are necessary for the administration
 25 or implementation of this chapter, that the assessments

1 apportion the required funding in an equitable manner, and
2 that the department has obtained the necessary
3 appropriation. The contested case provisions of the Montana
4 Administrative Procedure Act, Title 2, chapter 4, part 6,
5 apply to a hearing before the board under this subsection.

6 (5) (a) If the applicant or permit holder fails to pay
7 in a timely manner a fee required under subsection (1), in
8 addition to the fee, the department may:

9 (i) impose a penalty of not more than 50% of the fee,
10 plus interest on the required fee computed at the rate
11 contained in 15-31-510(3); or

12 (ii) revoke the permit consistent with those procedures
13 established under this chapter for permit revocation.

14 (b) Within 1 year of revocation, the department may
15 reissue the revoked permit after the applicant or
16 permit holder has paid all outstanding fees required under
17 subsections (1) and (4), including all penalties and
18 interest provided for under this subsection (5). In
19 reissuing the revoked permit, the department may modify the
20 terms and conditions of the permit as necessary to account
21 for changes in air quality occurring since revocation.

22 (6) The board may by rule allow the reduction of a fee
23 required under this section for an operating permit or
24 permit renewal to account for the financial resources of a
25 category of small business stationary sources.

1 (7) As a condition of the continuing validity of an
2 operating permit issued by the department under this chapter
3 prior to October 1, 1993, the board may by rule require the
4 permit holder to pay the fees under subsections (1) and (4).

5 (8) For an existing source of air contaminants that is
6 subject to Subchapter V of the federal Clean Air Act and
7 that is not required to hold an air quality permit from the
8 department as of October 1, 1993, the board may, as a
9 condition of continued operation, require by rule that the
10 owner or operator of the source pay the fees under
11 subsections (1) and (4).

12 (9) (a) The department shall give written notice of the
13 fee to be assessed and the basis for the department's fee
14 assessment under this section to the owner or operator of
15 the air contaminant source. The owner or operator may appeal
16 the department's fee assessment to the board within 20 days
17 after receipt of the written notice.

18 (b) An appeal must be based upon the allegation that
19 the fee assessment is erroneous or excessive. An appeal may
20 not be based on the amount of the fee contained in the
21 schedule adopted by the board.

22 (c) If any part of the fee assessment is not appealed,
23 it must be paid to the department upon receipt of the notice
24 required in subsection (9)(a).

25 (d) The contested case provisions of the Montana

1 Administrative Procedure Act, Title 2, chapter 4, part 6,
2 apply to a hearing before the board under this subsection
3 (9).

4 (10) The department may not charge more than one fee
5 annually to a source of air contaminants for the costs
6 identified in subsection-(1).

7 NEW SECTION. Section 13. Deposit of air quality
8 permitting fees. All money collected by the department
9 pursuant to [section 12] must be deposited in an account in
10 the state special revenue fund to be appropriated by the
11 legislature to the department for the development and
12 administration of the permitting requirements of this
13 chapter.

14 NEW SECTION. Section 14. Small business compliance
15 assistance advisory council. (1) There is a small business
16 compliance assistance advisory council.

17 (2) The council consists of seven members, as follows:

18 (a) two members that are not owners or representatives
19 of owners of small business stationary sources, appointed by
20 the governor to represent the general public;

21 (b) four members that are owners of small business
22 stationary sources and who are not legislators, one to be
23 appointed by the majority and minority leadership of the
24 house of representatives and one to be appointed by the
25 majority and minority leadership of the senate; and

1 (c) one member that is a representative of the
2 department of health and environmental sciences, appointed
3 by the director of that department.

4 (3) Appointed members shall serve for terms of 3 years.

5 (4) The provisions of 2-15-122(5) through (8) apply to
6 the council and its members.

7 NEW SECTION. Section 15. Small business compliance
8 assistance advisory council -- duties -- secretary --
9 meetings. (1) The small business compliance assistance
10 advisory council, established in [section 14], shall:

11 (a) render advisory opinions concerning the
12 effectiveness of the small business stationary source
13 technical and environmental compliance assistance program
14 administered by the department;

15 (b) make periodic reports to the appropriate federal
16 agency concerning the compliance of the small business
17 stationary source technical and environmental compliance
18 assistance program with the requirements of the federal
19 Clean Air Act, 42 U.S.C. 7401, et seq.;

20 (c) review information for small business stationary
21 sources to ensure that the information is understandable by
22 the lay person and recommend changes to make the information
23 understandable;

24 (d) consult with the small business stationary source
25 representative provided for in [section 18] regarding

1 problems faced by small business stationary sources
2 concerning the implementation and application of the
3 requirements of this chapter; and

4 (e) perform other duties necessary to meet the
5 requirements of the federal Clean Air Act.

6 (2) The council shall elect a presiding officer from
7 among its membership.

8 (3) The secretary of the council must be an employee of
9 the department assigned to the small business stationary
10 source technical and environmental compliance assistance
11 program. The secretary shall keep all records of meetings
12 and actions taken by the council and is responsible for the
13 development and dissemination of any reports and advisory
14 opinions of the council.

15 (4) The council shall hold at least one regular meeting
16 each calendar year and keep a summary record of its
17 proceedings that is open to the public for inspection.
18 Special meetings may be called by the presiding officer or a
19 majority of the council members. The secretary shall provide
20 advance notice of the time and place for meetings to each
21 member of the council.

22 NEW SECTION. Section 16. Small business stationary
23 source technical and environmental compliance assistance
24 program -- duties. (1) The department shall establish a
25 small business stationary source technical and environmental

1 compliance assistance program.

2 (2) The program shall:

3 (a) provide information to small business stationary
4 sources on compliance methods and technologies, pollution
5 prevention, and accidental release detection and prevention;

6 (b) assist small business stationary sources in
7 determining applicable requirements under this chapter and
8 in receiving permits in a timely and efficient manner;

9 (c) provide small business stationary sources timely
10 notice of their rights and obligations under this chapter;

11 (d) provide information to small business stationary
12 sources regarding the availability of audit services that
13 are useful for determining compliance status with the
14 requirements of this chapter; and

15 (e) perform other duties as may be necessary to meet
16 the requirements of the federal Clean Air Act, 42 U.S.C.
17 7401, et seq.

18 NEW SECTION. Section 17. Small business stationary
19 sources -- exceptions -- waivers. (1) Upon petition, the
20 department may designate a source to be a small business
21 stationary source for purposes of receiving assistance from
22 the small business stationary source technical and
23 environmental compliance assistance program if the
24 stationary source does not emit more than 100 tons per year
25 of all regulated air contaminants and:

1 (a) is a major stationary source as defined in
2 Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661,
3 et seq.;

4 (b) emits 50 tons or more per year of a regulated air
5 contaminant; or

6 (c) emits more than 75 tons per year of all regulated
7 air contaminants.

8 (2) After notice and an opportunity for public comment,
9 the department may grant a petition submitted under
10 subsection (1) upon finding that the source of air
11 contaminants does not have sufficient technical and
12 financial capabilities to meet the requirements of this
13 chapter without the assistance of the small business
14 stationary source technical and environmental compliance
15 assistance program.

16 (3) After notice and opportunity for public comment,
17 the department may exclude from the definition of small
18 business stationary source in 75-2-103 a category or
19 subcategory of sources that the department determines to
20 have sufficient technical and financial capabilities to meet
21 the requirements of this chapter without the assistance of
22 the small business stationary source technical and
23 environmental compliance assistance program. The department
24 may make this determination only after consulting with the
25 appropriate federal agencies under Subchapter V of the

1 federal Clean Air Act.

2 NEW SECTION. Section 18. Small business stationary
3 source representative -- duties. (1) The department shall
4 establish a small business stationary source representative
5 position that is not located in the department or subject to
6 the direct supervision of the department.

7 (2) The small business stationary source representative
8 shall represent the interests of small business stationary
9 sources before the department and other appropriate local,
10 state, and federal agencies concerning the implementation
11 and application of the requirements of this chapter. In
12 addition, the representative shall provide assistance to
13 small business stationary sources in meeting the
14 requirements of this chapter. In carrying out these
15 activities, the representative shall:

16 (a) monitor the activities of the small business
17 stationary source technical and environmental compliance
18 assistance program;

19 (b) review and provide comments and recommendations to
20 the department, local air pollution control programs, and
21 the appropriate federal agencies regarding the development
22 and implementation of regulations pertaining to air quality
23 that impact small business stationary sources;

24 (c) facilitate and promote the participation of small
25 business stationary sources in the development of new

1 regulations pertaining to air quality that impact small
2 business stationary sources;

3 (d) assist in the preparation and dissemination of
4 reports and other information regarding the applicability of
5 the requirements of this chapter to small business
6 stationary sources;

7 (e) assist in the preparation of guideline documents by
8 the small business stationary source technical and
9 environmental compliance assistance program to ensure that
10 these documents are readily understandable by the lay
11 person;

12 (f) assist small business stationary sources and their
13 trade associations to encourage voluntary compliance with
14 the requirements of this chapter;

15 (g) cooperate with appropriate local, state, and
16 federal agencies and private sector financial institutions
17 to assist small business stationary sources in locating
18 financial assistance necessary for compliance with the
19 requirements of this chapter;

20 (h) consult with the small business compliance
21 assistance advisory council regarding problems faced by
22 small business stationary sources concerning the
23 implementation and application of the requirements of this
24 chapter; and

25 (i) perform other duties as may be necessary to meet

1 the requirements of the federal Clean Air Act, 42 U.S.C.
2 7401, et seq.

3 **Section 19.** Section 75-2-301, MCA, is amended to read:

4 "75-2-301. Local air pollution control programs. (1)
5 After public hearing, a municipality or county may establish
6 and administer a local air pollution control program if the
7 program is consistent with this chapter and is approved by
8 the board.

9 (2) If a local air pollution control program
10 established by a county encompasses all or part of a
11 municipality, the county and each municipality shall approve
12 the program in accordance with subsection (1).

13 (3) Except as provided in subsection (4), the board by
14 order may approve a local air pollution control program
15 that:

16 (a) provides by ordinance or local law for requirements
17 compatible with, more stringent than, or more extensive than
18 those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212,
19 75-2-215, [sections 9 through 11], and 75-2-402, and rules
20 adopted under these sections;

21 (b) provides for the enforcement of requirements
22 established under subsection (3)(a) by appropriate
23 administrative and judicial processes; and

24 (c) provides for administrative organization, staff,
25 financial resources, and other resources necessary to

1 effectively and efficiently carry out the program. As part
2 of meeting these requirements, a local air pollution control
3 program may administer the permit fee provisions of 75-2-211
4 [section 12]. The permit fees collected by a local air
5 pollution control program must be deposited in a county
6 special revenue fund to be used by the local air pollution
7 control program for administration of permitting activities.

8 (4) Except for those emergency powers provided for in
9 75-2-402, the board may not delegate to a local air
10 pollution control program the authority to control any air
11 contaminant source that:

12 (a) requires the preparation of an environmental impact
13 statement in accordance with Title 75, chapter 1, part 2;

14 (b) is subject to regulation under the Montana Major
15 Facility Siting Act, as provided in Title 75, chapter 20; or

16 (c) has the potential to emit 250 tons per year or more
17 of any pollutant subject to regulation under this chapter,
18 including fugitive emissions, unless the authority to
19 control the source was delegated to a local air pollution
20 control program prior to January 1, 1991.

21 (5) If the board finds that the location, character, or
22 extent of particular concentrations of population, air
23 contaminant sources, or geographic, topographic, or
24 meteorological considerations or any combination of these
25 are such as to make impracticable the maintenance of

1 appropriate levels of air quality without an areawide air
2 pollution control program, the board may determine the
3 boundaries within which the program is necessary and require
4 it as the only acceptable alternative to direct state
5 administration.

6 (6) If the board has reason to believe that any part of
7 an air pollution control program in force under this section
8 is either inadequate to prevent and control air pollution in
9 the jurisdiction to which the program relates or is being
10 administered in a manner inconsistent with this chapter, the
11 board shall, on notice, conduct a hearing on the matter.

12 (7) If, after the hearing, the board determines that
13 any part of the program is inadequate to prevent and control
14 air pollution in the jurisdiction to which it relates or
15 that it is not accomplishing the purposes of this chapter,
16 it shall require that necessary corrective measures be taken
17 within a reasonable time, not to exceed 60 days.

18 (8) If the jurisdiction fails to take these measures
19 within the time required, the department shall administer
20 within that jurisdiction all of the provisions of this
21 chapter, including the terms contained in any applicable
22 board order, that are necessary to correct the deficiencies
23 found by the board. The department's control program
24 supersedes all municipal or county air pollution laws,
25 rules, ordinances, and requirements in the affected

jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(9) If the board finds that the control of a particular air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air contaminant source. No A charge may not be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(10) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (8) may, with the approval of the board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(11) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states."

NEW SECTION. Section 20. Codification instruction. (1) [Sections 9 through 13] are intended to be codified as an integral part of Title 75, chapter 2, part 2, and the

provisions of Title 75, chapter 2, part 2, apply to [sections 9 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 2, chapter 15, part 21, and the provisions of Title 2, chapter 15, part 21, apply to [section 14].

(3) [Sections 15 through 18] are intended to be codified as an integral part of Title 75, chapter 2, part 1, and the provisions of Title 75, chapter 2, part 1, apply to [sections 15 through 18].

NEW SECTION. Section 21. Saving clause. [Sections 5 through 8] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of sections 5 through 8].

NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 23. Retroactive applicability. (1) [Section 12(7)] applies retroactively, within the meaning of 1-2-109, to all permits issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, prior to [the effective date of section 12].

1 (2) [Sections 4(2), 9(2) and (3), and 12(8)] apply
2 retroactively, within the meaning of 1-2-109, to all
3 activities identified in those subsections that are not
4 subject to a permit issued by the department of health and
5 environmental sciences pursuant to Title 75, chapter 2, as
6 of [the effective date of sections 4, 9, and 12].

7 NEW SECTION. **Section 24.** Effective dates. (1)
8 [Sections 1, 14 through 18, 20 through 23, and this section]
9 are effective on passage and approval.

10 (2) [Sections 2 through 13 and 19] are effective
11 October 1, 1993, but the board and department may proceed
12 with the rulemaking authorized under [sections 2 through 13
13 and 19] upon passage and approval. The effective date of any
14 rules adopted to implement [sections 2 through 13 and 19]
15 may not be effective before October 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0318, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the laws relating to air quality; authorizing the Department of Health and Environmental Sciences to administer a program for the issuance and renewal of air quality operating permits.

ASSUMPTIONS:

1. This fiscal note was prepared from the Montana Air Permit Fee Analysis, which provides a detailed review and analysis of the required fee program for implementation of the federal Clean Air Act Amendments (CAAA).
2. The state currently has a pre-construction air quality permit and primacy for this program.
3. The federal amendments require industry also have an operating air quality permit and mandate the program be entirely fee-funded.
4. The proposed law complies with the federal amendments and results in the increased air quality fees of \$518,236 in FY94 and \$745,602 in FY95.
5. General fund is maintained at the reduced special session level for non-industry pollution control, e.g., woodstoves, sand on streets and for the grants to seven county programs which can not be fee-funded in accordance with federal law.

FISCAL IMPACT:

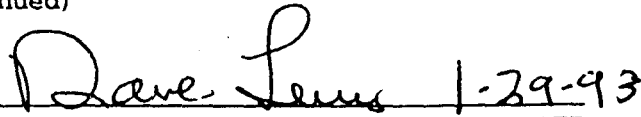
Expenditures:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	29.03	38.03	9.00	29.03	43.03	14.00
Personal Services	1,079,942	1,382,358	302,416	1,081,242	1,550,076	468,834
Operating Expenses	556,036	757,456	201,420	564,643	833,411	268,768
Capital Outlay	39,346	53,746	14,400	37,388	45,388	8,000
Local Assistance/Grants	230,645	230,645	0	221,415	221,415	0
Total	1,905,969	2,424,205	518,236	1,904,688	2,650,290	745,602

Funding:

General Fund	193,312	193,312	0	193,312	193,312	0
Federal Special Revenue (Grant)	1,151,619	1,151,619	0	1,042,064	1,042,064	0
State Special Revenue (Fees)	561,038	1,079,274	518,236	669,312	1,414,914	745,602
Total	1,905,969	2,424,205	518,236	1,904,688	2,650,290	745,602

(Continued)


DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

SHEILA RICE, PRIMARY SPONSOR DATE

Fiscal Note for HB0318, as introduced

HB 318

<u>Revenues:</u>	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund	193,312	193,312	0	193,312	193,312	0
Federal Special Revenue (Grant)	1,151,619	1,151,619	0	1,042,064	1,042,064	0
State Special Revenue (Fees)	<u>561,038</u>	<u>1,079,274</u>	<u>518,236</u>	<u>669,312</u>	<u>1,414,914</u>	<u>745,602</u>
Total	1,905,969	2,424,205	518,236	1,904,688	2,650,290	745,602

Net Impact:

State Special Revenue (Fees)	0	0	0	0	0	0
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: There is no direct impact of this bill on counties or communities. Under the Montana Clean Air Act, local or county air quality programs can be delegated authority to implement portions of the state act providing they meet certain eligibility criteria. If the operating permit program was delegated to a local or county air quality program, then that program would collect fees from the industrial sources it regulates.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Additional growth in Montana's Air Quality Program is projected for the next two bienniums to fully implement the CAAA. Because of the delayed schedule for many CAAA requirements, it is difficult to estimate resource needs with precision beyond this biennium. Full implementation of the CAAA in Montana will better assure our citizens of healthful air quality.

TECHNICAL NOTES: Actual fees for air pollution sources are set by the Board of Health and Environmental Sciences on an emissions basis (\$ per ton) within the Legislature's appropriation. Projected fees are as follows:

FY94 - \$9.00/ton of particulate, lead, SO ₂	FY95 - \$11.75/ton
- \$2.25/ton of NOx, VOC	- \$2.94/ton

Proponents' Testimony:

Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, presented testimony in support of the legislation. EXHIBIT 1

EXHIBIT 2 provides an overview of the Montana Underground Storage Tank Program.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

The committee discussed the ramifications and changes contained in the legislation.

Closing by Sponsor:

REP. GILBERT closed the hearing on HB 423.

HEARING ON HB 318

Opening Statement by Sponsor:

REP. SHEILA RICE, HD 36, Great Falls, opened the hearing and explained the legislation's intent. The bill revises the laws relating to air quality, and authorizes the Department of Health and Environmental Sciences (DHES) to administer a program for issuing and renewing air quality operating permits.

Proponents' Testimony:

Jeff Chaffee, Air Quality Bureau, DHES, presented testimony containing an overview of the legislation. EXHIBIT 3

Jan Sensibaugh, Air Quality Bureau, DHES, briefly described how the legislation would affect the Department's permitting authority and Title 5 requirements.

Tim Baker, Air Quality Bureau, DHES, explained the enforcement authority aspects of the legislation and distributed a handout delineating 42 amendments proposed by the Department. EXHIBIT 4

Ken Williams, Montana Power Company, distributed amendments for the committee's consideration. EXHIBIT 5

Janelle Fallan, Montana Petroleum Association, submitted testimony and amendments for HB 318. EXHIBITS 6, 7, 8

Dennis Olson, Northern Plains Resource Council, handed out testimony from Mort Reid, Chairman of the Yellowstone Valley Citizen's Council and highlighted the testimony. EXHIBIT 9

Ed Scott, Environmental Supervisor, Stone Container Corporation, read written testimony in support of the legislation. EXHIBIT 10

Brian McNitt, Montana Environmental Information Center, expressed the Center's support for the legislation.

Don Allen, Montana Wood Products Association, endorsed the amendments presented by Montana Power Company.

Mary Westwood, Director, Governmental Relations, Montana Sulphur and Chemical Company, distributed testimony in support of HB 318 with the amendments offered by the Air Quality Bureau.
EXHIBIT 11

Rex Manuel, Cenex, supported current testimony, DHES amendments, and strongly endorsed the amendments presented by Montana Power Company.

Dave Ross, Montana Audubon Council, stated support for the legislation. EXHIBIT 12

Bill McLane, Attorney, Conoco, stated Conoco strongly supported the bill with the amendments proposed by the DHES, but expressed concerns with stringency, and referred to amendments submitted by the Montana Power Company.

Bob Williams, Montana Mining Association, concurred with HB 318 and supported Montana Power's amendments.

Dan White, Stillwater PGM Resources, expressed the firm's backing for HB 318 and Montana Power's amendments.

Dexter Busby, Montana Refining, said his company supported the bill with DHES amendments and asked for consideration of Montana Power's amendments.

Russ Ritter, Washington Corporations, Montana Resources, and Enviro-Tron, stated support from the organizations with the amendments from Montana Power.

EXHIBIT 13 is supporting testimony from the Eastern Montana College Environmental Awareness Club.

Questions From Committee Members and Responses:

The committee questioned the proponents on their support for the amendments that had been offered to the bill. Intent of the proposed amendments was also discussed.

Closing by Sponsor:

REP. RICE closed by asking for support of the legislation and encouraged the acceptance of the amendments from the DHES. She

added the amendments offered by Montana Power required more discussion and asked for delay of executive action until dialogues could be held with the company.

HEARING ON HB 395

Opening Statement by Sponsor:

REP. MIKE FOSTER, HD 32, Townsend, began the hearing on HB 395, which closes the upper Missouri River Basin to further issuance of consumptive surface water permits until the adjudication is complete.

Proponents' Testimony:

Susan Callahan, Montana Power, urged passage of HB 395.
EXHIBIT 14

Jo Brunner, Montana Water Resources Association, expressed support for the legislation.

Mike Voleskey, Montana Association of Conservation Districts, stated his organization wanted to go on record as supporting this bill.

Opponents' Testimony:

Bob Lane, Department of Fish, Wildlife & Parks (FWP), disseminated testimony stressing the department's objections to the legislation. EXHIBIT 15

Stan Bradshaw, Trout Unlimited, submitted proposed amendments to HB 395. EXHIBIT 16

John Bloomquist, Special Assistant, Montana Stockgrowers Association, objected to the amendments that had been offered to the legislation.

Questions From Committee Members and Responses:

The committee discussed the impact of the legislation on public and private interests, the affect of the proposed amendments, and questioned the sponsor, REP. FOSTER, extensively on the bill.

Closing by Sponsor:

REP. FOSTER stressed that many points heard during the hearing were similar to those heard on the Teton Basin issue. He addressed concerns that surfaced during testimony, including those stated by FWP.

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE _____

2-10-93

[illegible]

HR:1993

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Explanation of Amendments to House Bill No. 318
Introduced Bill Copy

Requested by the Department of Health
and Environmental Sciences
For the House Committee on Natural Resources

The forty-two attached amendments to HB 318 address twelve areas of concern raised by the regulated community. A short narrative summary of each area is provided below.

1. The regulated community expressed concern that the new operating permit program could serve as a basis for the imposition of new substantive emission limitations, beyond those required by the federal Clean Air Act. To address this concern, the Statement of Intent has been amended to make it clear that this is not the intention of the legislature.

2. The regulated community was concerned that the new operating permit program would not allow for operational flexibility, and specifically would not allow for what are known as "minor permit modifications" and "off-permit changes". As it stands, the current version of the bill contains a provision requiring operational flexibility. To further address this concern, the Statement of Intent has been amended to make it clear that "minor permit modifications" and "off-permit" changes are envisioned.

3. The regulated community expressed concern that the amendments to the existing construction permitting program were being expanded. The Statement of Intent indicates that these amendments are to clarify existing practice. To further address this concern, the Statement of Intent has been amended to clarify that the legislature did not intend to expand the current construction permitting program.

4. The regulated community was concerned that the bill muddled the use of the terms "air contaminants", "air pollution", and "regulated air pollutants", with the possible result being the expansion of regulation under the Act. To address this concern, amendments have been made, including the addition of a new term "air pollutants". These amendments do not result in any expansion of regulation under the Act.

5. The regulated community expressed concern that the bill created confusion between the existing construction permitting program and the new operating permit program. This in part resulted from last minute amendments to the bill during the editing process, which substantively changed the interaction of these two programs. To address this concern, amendments have been made to make clearer the separation between the two programs.

6. The regulated community was concerned that the bill would limit or abridge the right of the permit applicant to seek traditional judicial remedies to force the Department to meet the timelines contained in the bill for granting or denying a permit. This was not the intent of the legislation, which was silent on this point. To address this concern, amendments have been made to clearly state that the permit applicant may obtain relief through these traditional remedies.

7. The regulated community expressed concern that the bill was more stringent than federal law in terms of the factors that must be considered by the Board or Department in assessing administrative civil penalties. To address this concern, amendments have been made to track the federal language on this point.

8. The regulated community was concerned that the bill was more stringent than federal law in terms of the maximum criminal punishment allowed. There was also a concern that the criminal punishment statute, as drafted, did not precisely track the federal law in some critical respects. Amendments have been made to address both of these concerns.

9. The regulated community expressed concern that the bill called for criminal punishment that could be construed as a felony charge against the offender. To address this concern, amendments have been made to classify criminal violations of the Act as a misdemeanor.

10. The regulated community was concerned that the bill did not require the Department to define criteria for both determining application completeness and when additional information would be necessary after a completeness determination had been made. In addition, there was concern that the protection offered by the "application shield" was not clear. To address these concerns, amendments have been made to require the Department to adopt such criteria, and clarifying the protection offered by the "application shield" when an operating permit has expired and a timely and complete renewal application has been filed.

11. The regulated community expressed concern that the bill did not allow for representatives of small businesses to serve on the Small Business Assistance Advisory Council. To address this concern, amendments have been made to clearly allow such representation.

Amendments to House Bill No. 318
Introduced Bill Copy

EXHIBIT 4
DATE 2-10-93
HB 318

Requested by the Department of Health
and Environmental Sciences
For the House Committee on Natural Resources

1. Page 4, line 3.

Strike: ", and it"

Insert: "It"

2. Page 4, line 6.

Strike: "."

Insert: ", and that the department allow for operational flexibility at those sources, including provisions for minor permit modifications and off-permit changes. The legislature does not intend that the operating permit program administered by the department serve as a basis for imposing additional emission limitations upon sources within the state, except as required by Subchapter V."

3. Page 4, line 18.

Following: "11]."

Insert: "The clarifying amendments contained in this bill are not intended to expand the current authority of the department to administer an air quality permitting program relating to construction, installation, alteration, or use."

4. Page 6, lines 1, 2 and 3.

Strike: ", including pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq."

5. Page 6, lines 4, 5 and 6.

Strike: "in the outdoor atmosphere of one or more air contaminants"

Insert: "of air pollutants"

6. Page 6, line 4.

Insert: "(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq."

Re-number: subsequent sections

7. Page 7, line 7.

Strike: "regulated"

8. Page 7, line 8.

Strike: "contaminants"

Insert: "pollutants"

9. Page 7, line 10.

Strike: "regulated"

10. Page 7, line 10.

Strike: "contaminants"

Insert: "pollutants"

11. Page 8, line 23.

Following: "~~pollutants~~"

Insert: "pollutants"

Strike: "contaminants"

12. Page 10, line 15.

Following: "~~pollutants~~"

Insert: "pollutants"

Strike: "contaminants"

13. Page 9, line 2.

Strike: "operation,"

14. Page 9, line 3.

Strike: "expiration,"

15. Page 9, line 4.

Strike: "amendment,"

16. Page 9, line 5.

Following: "issued"

Insert: "a permit issued"

17. Page 9, lines 5 and 6.

Strike: "operating permits as part of an operating permit program to be administered by the department"

18. Page 9, line 7.

Following: "~~part~~"

Insert: "part"

Strike: "chapter"

19. Page 16, line 16.

Following: "application."

Insert: "This does not limit or abridge the right of any person to seek available judicial remedies to require the Department to act in a timely manner."

20. Page 19, line 12 through 16.

Strike: lines 12 through 16 in their entirety.

Insert: "(i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;

(ii) the alleged violator's full compliance history and good faith efforts to comply;

(iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;

- (iv) payment by the violator of penalties previously assessed for the same violation;
- (v) the economic benefit of noncompliance;
- (vi) ~~the~~ seriousness of the violation; and

21. Page 19, line 17.

Strike: "(iv)"

Insert: "(vii)"

22. Page 20, line 23.

Following: "false"

Insert: "material"

23. Page 21, line 5.

Strike: "3"

Insert: "2"

24. Page 21, line 6.

Following: "violation."

Insert: "This offense shall be classified as a misdemeanor."

25. Page 25, lines 13 and 14.

Strike: "air contaminants"

26. Page 29, line 21.

Following: "made."

Insert: "The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has occurred."

27. Page 30, line 24.

Following: "."

Insert: "The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed, and shall be subject to the application of subsection (9)."

28. Page 30, line 4.

Following: "application."

Insert: "This does not limit or abridge the right of any person to seek available judicial remedies to require the Department to act in a timely manner."

29. Page 32, line 19.

Strike: "contaminants"

Insert: "pollutants"

30. Page 34, line 2.

Strike: "contaminants"

Insert: "pollutants"

4
240-93
43 318

31. Page 34, line 3.
Strike: "contaminants"
Insert: "pollutants"
32. Page 34, line 5.
Strike: "contaminants"
Insert: "pollutants"
33. Page 36, line 5.
Strike: "contaminants"
Insert: "pollutants"
34. Page 36, line 15.
Strike: "contaminants"
Insert: "pollutants"
35. Page 37, line 5.
Strike: "contaminants"
Insert: "pollutants"
36. Page 37, line 21.
Following: "owners"
Insert: "or representatives of owners"
37. Page 40, line 25.
Strike: "regulated"
38. Page 40, line 25.
Strike: "contaminants"
Insert: "pollutants"
39. Page 41, line 4.
Strike: "regulated"
40. Page 41, line 5.
Strike: "contaminants"
Insert: "pollutants"
41. Page 41, line 6.
Strike: "regulated"
42. Page 41, line 7.
Strike: "contaminants"
Insert: "pollutants"

EXHIBIT 5
DATE 2-10-93
HB 318

February 10, 1993

PROPOSED AMENDMENTS TO HB 318
INTRODUCED BILL COPY
REQUESTED BY THE MONTANA POWER COMPANY

1. Page 4, line 6.
Following: "V."
Insert: "Further, it is the desire of the legislature that the operating permit program for those sources subject to Subchapter V of the federal Clean Air Act shall be no more stringent than required by Subchapter V."
2. Page 22, lines 18 through 25.
Delete in their entirety.
3. Page 23, lines 1 through 4.
Delete in their entirety.
4. Page 25, line 12.
Following: "chapter."
Insert: "The board must promulgate rules that are no more stringent than the requirements of Subchapter V of the federal Clean Air Act."
5. Page 26, lines 15 through 19.
Delete in their entirety and replace with: "adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete; for processing such applications; and for expeditious review of permit actions, including applications, renewals or revisions;"
6. Page 34, line 1.
Following: "for"
Insert: "actual"
7. Page 34, line 25.
Following: "chapter,"
Insert: "that the amount of requested fees is appropriate,"
8. Page 35, lines 9 and 10.
Delete: "impose a penalty of not more than 50% of the fee, plus"

9. Page 37, line 13.

Following: "chapter."

Insert: "The operating permit fees and the construction permit fees must be maintained in separate subaccounts. Sources paying fees under the operating permit program shall have the right to audit the operating permit program quarterly."

Montana Petroleum Association
Janette Adlam
2-10-93

EXHIBIT 6
DATE 2-10-93
HB 318

TESTIMONY BEFORE THE HOUSE NATURAL
RESOURCES COMMITTEE
Concerning
HOUSE BILL 318

Stringency

Most important - Montana program should be no more stringent than the minimum the federal government requires the state to include in its program.

Criminal Penalties

- Eliminate prison terms. The State is not required to impose prison terms or to have an enforcement program identical to the federal EPA's. EPA is not precluded from enforcing existing criminal penalties against any Montana source.
- Intentional rather than knowing violations should be required for criminal penalties to be imposed. Significant civil penalties for knowing violations are already in place.

Civil Penalties

Require that a violator's full compliance history and good faith efforts be considered when assessing the amount of civil penalties, consistent with the federal Clean Air Act.

Continuing Violations

Eliminate the subsection requiring that a permittee prove he is not guilty of continuing violations. May be unconstitutional and is not required to obtain federal approval of state's operating permit program.

Permit Shield

- Clarify that compliance with an approved operating permit is compliance with all permit requirements without express reference to those requirements on the permit.
- Separately provide that compliance with an operating permit is compliance with other applicable air quality laws if the operating permit includes those requirements or includes a determination that those requirements are not applicable.

Construction Permits

Add language consistent with the federal Clean Air Act that a construction permit is needed only for a significant increase in emissions of a regulated air pollutant.

Construction and Operating Permit Applications

- Require the Department to adopt by rule a list of all possible criteria by which an application is deemed complete.
- Delete language that state has no burden to timely approve permit applications.

Definition of Air Contaminant

Eliminate the term "air contaminant" and focus the Montana Act on "air pollutants" as defined in the federal Clean Air Act. Otherwise, the bill could also apply to inside air.

EXHIBIT 7
DATE 2-10-93
HB 318

HB 318 SUGGESTED CHANGES

Permit Shield

Section 10 (9) Compliance with an operating permit granted or renewed under (section 9) and this section is considered to be compliance with the permit requirements of this chapter, and shall be considered compliance with other requirements of this chapter if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under (section 9).

Mt Petroelum Ass'n

EXHIBIT 8
DATE 2-10-93
HB 318

HB 318 SUGGESTED CHANGES

Stringency

Add conforming language throughout HB 318: "The Board may not adopt rules that are more restrictive than those a state is required to adopt under the Clean Air Act Amendments of 1990 in order to obtain approval to implement the air permit program.

Mt Petroleum Ass'n

Amendment HB 318 (Rice) MPA = Janelle
Fullan

1. Page 33, line 2
Following: "application"
Insert: "as"
2. Page 33, line 2
Following: "required"
Strike: "under this"
3. Page 33, line 2
Insert "Pursuant to Subchapter V of
the Federal Clean Air Act"
4. Page 33, Line 3
Strike: "chapter"

Simply clarifies that Fee assessments
are tied to Clean Air Act Amendments
of 1990.

Northern Plains Resource Council

EXHIBIT

DATE

2-10-93

HB

318

TESTIMONY OF THE YELLOWSTONE VALLEY CITIZEN'S COUNCIL & THE NORTHERN PLAINS RESOURCE COUNCIL ON HB 318 BEFORE THE MONTANA HOUSE NATURAL RESOURCE COMMITTEE

February 10, 1993

Mr. Chairman, members of the committee, for the record, my name is Mort Reid, and I am chair of the Yellowstone Valley Citizen's Council (YVCC), a local affiliate of the Northern Plains Resource Council (NPRC). I am testifying today on behalf of both organizations. I am sorry I cannot be here today, but I had taken the day off for the hearing on this bill scheduled earlier on January 29th which was cancelled, and I could not take another day off work.

YVCC has been involved with Yellowstone County's air pollution issue for twenty years. Our members believe that we can and should have both a healthy environment and economic prosperity.

In order to work towards an air quality program that both protects our health, and ensures a sound economic environment, YVCC has been an active participant on the State Air Quality Advisory Council. We are here today to urge your support of those sections in HB 318 that would allow the State of Montana, as authorized by the U.S. Environmental Protection Agency (EPA), to administer an operating permit fee program applicable to certain sources of air contaminants, and provide for the resources necessary to enforce that program. An air contaminant of particular concern to YVCC is sulphur dioxide (SO₂). There is a serious SO₂ pollution problem in Yellowstone County. The six major SO₂ polluting industries in the County (Exxon, Cenex, MT Power-Corlette, MT Sulphur and Chemical Co., Conoco, and Western Sugar) are responsible for emitting 31,000 tons of SO₂ into our airshed every year. When you consider that that is 31,000 tons of a gas, you can even further appreciate the amount of pollution in our airshed.

Furthermore, these

31,000 tons account for 42% of Montana's entire SO2 emissions.

Background of Montana's Attempts to Address the SO2 Pollution Problem in Yellowstone County

In 1980, Montana attempted to address the state's SO2 pollution problem by establishing a one-hour standard, a 24-hour standard, and an annual standard for SO2. Unfortunately, the one-hour standard established by the State Legislature was rendered nearly useless by the Board of Health, who approved rules--against the recommendation of the Air Quality Bureau--allowing this standard to be exceeded on each monitor 18 times annually before a violation would be registered. According to State Air Quality Officials, this one-hour standard of 0.5 ppm with 18 exceedences is nearly equivalent to the federal 3-hour SO2 standard, which, for the record, was established to protect vegetation, not people. The ineffectiveness of the one-hour standard, in effect, left the citizens with only two remaining state health-based standards, i.e., the 24-hour and the annual standards.

In 1987, the SO2 pollution problem in Yellowstone County was once again avoided with the passage of House Bill 534. This bill exempted from the 24-hour, and the annual SO2 standards, any industry whose 1985 modeling data showed violations of those standards. In order to ensure the passage of this bill, the following promises were made:

First, Yellowstone County industries pledged to voluntarily reduce their emissions (see attached Montana Standard Article article).

Second, The Billings-Laurel Air Quality Technical Committee (BLAQTC) would be formed with the intent that industries would work with the state in a cooperative manner to voluntarily reduce Yellowstone County's air pollution.